

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, an appeal from the issuance of a substantial development permit and conditional use permit to the Washington State Department of Highways by Yakima County and approval thereof by the Department of Ecology, came before the Shorelines Hearings Board, W. A. Gissberg, Chairman (presiding), Robert E. Beaty, Robert F. Hintz, Dave J. Mooney, Gerald D. Probst and Chris Smith in Lacey, Washington on November 14, 15 and 16, 1977. Board members Beaty and Probst, being absent on November 16, 1977, have read the transcript for that day.

Appellants were represented by their attorney, J. Richard Aramburu; respondent Department of Highways was represented by Charles F. Secrest, Assistant Attorney General; respondent Yakima County was represented by Louis Daniel Fessler, Deputy Prosecuting Attorney; respondent Department of Ecology was represented by Robert V. Jensen, Assistant Attorney General.

Having heard the testimony or having read the transcript thereof, having examined the exhibits, having considered the parties' pre-hearing briefs, contentions, and arguments, and being fully advised, the Shorelines Hearings Board makes the following:

FINDINGS OF FACT

I.

This matter arises from the issuance of a shoreline substantial development permit, variance and conditional use permit to the Washington State Department of Highways (hereinafter "DOH") by Yakima County (hereinafter "County") for the construction of a fifteen mile long portion of an interstate highway facility, commonly known as I-82, between Union Gap and Zillah along a portion of the Yakima River, a shoreline of statewide significance. (Zillah has issued a substantial development permit for the highway covering the shoreline area within its corporate limits.) The substantial development and conditional use permit was approved by the Department of Ecology (hereinafter "DOE") although it made no ruling on the variance issue. Appellants appealed the County's and the DOE's action to this Board.

Floodplain and hydraulics permits have already been issued to DOH by the appropriate state agencies and were not appealed.

II.

The proposed highway is a two directional roadway separated by a median with two or more traffic lanes in each direction and is designed to carry up to 30,000 vehicles per day in the year 1995. Access to the highway would be provided at, and limited to, four selected interchanges. All proposed interchanges would be connected to existing bridges which cross the Yakima River. The cost of the highway is \$42,000,000.

The stretch of highway I-82 beginning at Ellensburg and ending south of the town of Union Gap has been constructed and is now in use. From Union Gap, the proposed highway is located along the lower slope of Rattlesnake Ridge, above and generally parallel to existing highway SR-12, until it reaches the Sunnyside Dam. Continuing south of the dam and through Zillah, the proposed highway is flanked by the Burlington Northern Railroad on the left and by the Yakima River on the right. The alignment of the highway is designed to stay away, as much as possible, from developed agricultural lands and to infringe as little as possible upon the floodplain of the Yakima River. The river characteristically changes its course frequently in the area between Union Gap and Zillah. Downriver at about the midpoint between Granger and Mabton the river then stays in one channel until it reaches Richland.

III.

The area surrounding the proposed freeway is rural in nature with homes, orchards, irrigated pastures, and cultivated row crops. The soil on both sides of the river is fertile. Cultivated areas are irrigated by a series of canals and ditches distributing water from foothill reservoirs and the Yakima River. Farmland subject to frequent flooding is generally used as pasture land for grazing of cattle. Such grazing tends to promote the presence of wildlife because it opens vegetation cover which would be otherwise too thick for such wildlife. Wildlife found in the floodplain is more prolific than on adjacent upland farm areas or on the desert environment along an alternate route known as the "Y" route. Being located near the edge of the floodplain, the highway would serve as a barrier to further encroachment of intensive agricultural farming on the southerly or riverside of the road, and function as a

dike to protect lands lying northerly of the road from flooding. Although the highway would act as a barrier preventing access by wildlife living on the uplands from water in the Yakima River, water is also available north of the route at the Roza Canal.

IV.

Four small communities, Donald, Sawyer, Buena and Zillah, are presently served by highway SR-12 and would be served by the proposed highway. Highway SR-97 serves the towns of Wapato, Toppenish, and Parker, and lies across the Yakima River to the southwest where approximately seventy percent of the land is held in trust by the United States government for the Yakima Indian Nation. The majority of land along the proposed highway route is privately owned.

V.

There are several alternative locations or choices for the proposed highway project. First is the "no build" alternative which DOH found unacceptable due to the limited vehicular carrying capacity and safety deficiencies of the existing highways which would become worse in the future. The second alternative is the upgrading of the existing highways, SR-12 and SR-97/22. This alternative was rejected because of extraordinary community disruption, loss of intravalley access from reconstruction of SR-12, and unavailability of necessary rights-of-way from the Yakima Indian Nation for reconstruction of SR-97/22. The third alternative corridor, a route along SR-97/22 was unavailable because Yakima Indian tribal lands could not be condemned for highway purposes. The fourth alternative, which is earnestly supported by appellants, is the "Y" route which would locate the interstate highway out of the Yakima River floodplain. The "Y" highway route was first proposed by the Yakima County Commissioners in 1971 as a possible alternative as a result of their primary concern that the highway location should take and use as little prime agricultural land as possible; the "Y" route would utilize less cultivated agricultural lands and there would be less impact on irrigation facilities than the proposed route. The "Y" route diverges from existing I-82 at Union Gap, crosses the Yakima River, ascends to and through Konowac Pass on Rattlesnake Ridge, then traverses along the south slope of the ridge to a point north of Sunnyside. In so doing it would necessarily pass through a portion of a rare butterfly bog and a private 930 acre game preserve. The "Y" route lies within undeveloped lands except for a four mile segment of

farmlands and homes north of Sunnyside. The area surrounding the "Y" route has fewer numbers of wildlife per acre than the area surrounding the route of the proposed highway because of the arid nature of the land. Of all the considered choices, the "Y" route would have the least adverse impact on air, noise and water pollution and would least affect the floodplain or recreational lands along the Yakima River.

VI.

The proposed highway is located in the floodplains of the Yakima River along the general line separating agricultural from wooded areas. Such location minimizes the disruption of agricultural land and residences, and minimizes the impact upon wooded and natural areas in the floodplain.

VII.

The location of a portion of the proposed highway within the floodplain is necessary to serve the towns of Zillah, Buena, Sawyer and Donald from such highway. A substantial majority of the local citizenry desire the highway to be constructed at the location proposed by DOH and not over the "Y" route alternative.

VIII.

The conclusion drawn by the DOH from its seven year planning process for the highway is that the proposed shoreline location is the "most feasible, when social, economic, environmental, and engineering factors" are considered as compared to the alternatives. The "Y" route and its related improvements, urged by appellants, comes with the following shortcomings: It would serve long distance rather than local traffic, which latter traffic comprises the majority of the expected increase; local traffic increases would nonetheless require major improvements on existing highways SR-12 and SR-97/22; major improvements on existing highways SR-12 and SR-97/22 would negate any social, economic, and environmental advantage gained by the "Y" route; the "Y" route would pass through miles of underdeveloped areas, including some areas thought to have far more productive soils than the river bottom soils and through a game preserve and butterfly bog; more total acreage would be needed for the "Y" route; from an engineering standpoint, the "Y" route is less feasible than the proposed highway; the "Y" route is less efficient in terms of fuel use over the distance transversed; the "Y" route must be completed in its entirety

before use whereas portions of the proposed highway can be used when completed. In addition, the "Y" route would require lengthy and costly approachment roads to provide valley access. On the other hand, the proposed highway has a greater total adverse environmental impact than the "Y" route by itself. Additionally, the proposed highway will cost more to construct than the slightly longer "Y" route. DOH considered these factors and the public support for each route before rejecting the "Y" route.

IX.

The Yakima County Shoreline Master Program (hereinafter "YCMP") was adopted by the Yakima County Commissioners and approved by the DOE, and is identified in the record as Exhibit R-L. Therein, the YCMP provides for roads as follows:

15.09 Roads and Railroads

15.09.010 Definition. A lineal passageway for vehicular traffic. Railroads have metal rails to support train traffic. This definition includes structures necessary for maintenance of transportation routes.

15.09.020 Urban, Rural, and Conservancy Environments. The following Roads and Railroads are permitted in the Urban, Rural, and Conservancy Environments:

. . .

15.09.022 By Conditional Use Permit only when social, economic, environmental, and engineering studies indicate a shoreline location to be the most feasible:

- a) Transportation thoroughfares including major highways, freeways, or railways.
- b) Structures housing transportation maintenance facilities.

On balance, we find the most feasible route within the meaning of the master program, when social, economic, environmental and engineering factors are considered, is the proposed highway. We are not persuaded that the "Y" route, including its related improvements, is more feasible than the proposed highway location. No evidence was presented by appellants that the "Y" route was more feasible from an engineering standpoint.

X.

A subsequently selected route from the considered alternatives would be less feasible in terms of social, economic, environmental, and engineering factors. For example, trucks using the "Y" route would have to climb steep grades thereby using more fuel, needing more time, and creating more air pollution than is necessary to make a trip from Yakima to Zillah. Truckers now shun I-82 between Ellensburg and Yakima, in favor of the old Canyon Drive, because of steep grades. In the river valley, those businesses and homes along SR-12 and SR-97 would be disrupted and some of them would be relocated when necessary major improvements are constructed. Local people in the valley would have to drive additional miles just to reach and use the "Y" route highway. The proposed alignment in the valley minimizes the use of agricultural land. A change of the alignment would require more agricultural land without any corresponding benefits and thereby ignore the clearly expressed community and federal goal to protect farmland.

XI.

DOH proceeded in its planning process recognizing that a shoreline substantial development permit would be necessary, but chose to delay its application therefor until a more specific location of the highway could be made due to the inherently long, statutorily-mandated planning process and property acquisition typical to such projects, and the relatively short period for construction pursuant to a shorelines permit. For example, it takes longer than two years to acquire rights-of-way by condemnation while the shoreline management regulations require that construction begin within two years from permit issuance. DOH has also acquired about one-third of the rights-of-way along the chosen route even though construction pursuant to a shoreline permit was not assured. Although DOH must use such property acquired only for highway and related purposes, it may also dispose of such property.

XII.

Vehicles using the proposed highway and the local access routes will be the major source of air pollutants. Because the ambient air is relatively free from vehicular pollutants, and declines in vehicular emissions are expected over the design period, maximum concentrations of air pollutants are expected to be low. Dust, probably the most detrimental pollutant in this agricultural area, will

be controlled with sprinklers during construction and is not expected to be a problem. The projected overall impact of the highway on air pollution is small. In any event, air pollution levels, as a result of the proposed highway, will not violate national ambient air quality standards or the Washington State Air Quality Implementation Plan.

Appellant presented no evidence as to what air pollutant contributions would result from permitted land uses in a rural or conservancy environment.

XIII.

Water quality of the Yakima River, rated Class B by the DOE, is often degraded due to human activities. Water quality during the summer months is poor, particularly in terms of high coliform bacteria counts, high water temperatures, increased nitrate levels and altered ionic balance due to agricultural pursuits from farmlands lying on the north side of the river. A major cause of poor water quality in the river is siltation attributable to agricultural operations.

XIV.

Use of the proposed highway, a portion of which is located in the floodplain of the Yakima River, will cause deposits of oils, solids, de-icing salts, rubber wastes, litter, and traces of coliform bacteria on the highway which will be carried away by the occasional precipitation which averages only seven inches per year. The small amounts of surface runoff will be led away from the river, gathered, percolated into the soil and naturally filtered before reaching the river as ground water. The residue from the process will be left to decompose naturally. The impurities from highway runoff which do reach the water would constitute only a negligible increase of pollutants and will not measurably affect the water quality of the Yakima River. There will be increased risks of spills of toxic substances as a result of highway use.

XV.

The proposed highway could adversely affect water quality during the construction period by increasing siltation and turbidity, and by creating spill hazards from oil, cement and other toxic materials to ground and surface waters. Permit conditions, however, require that DOH take measures to prevent any such pollution.

XVI.

Generally, the conclusion drawn from an acre per acre comparison of pollutants caused by a highway and that caused by agricultural uses is that a highway creates more pollution than agricultural uses except for sediments. The types of pollutant differ, however. One acre of highway use will produce an amount of salt equivalent to that produced by three acres of agricultural uses. On the other hand, agricultural uses produce more siltation and coliforms than road uses. After testifying as to the foregoing, the DOE water quality expert did not know whether water pollution would be more severe from highway uses than agricultural uses.

XVII.

There will be a disruption of the existing setting along the river caused by the proposed highway. In place thereof will be segments of highway built on moderately high embankments some of which will be built near homes. To some persons, the highway, with its bridge lines, contour grading and landscaping, will appear aesthetically pleasing. To other persons, such vista, with occasional high fills, deep cuts, signs and poles, will be aesthetically displeasing.

XVIII.

Vehicular traffic on the proposed highway will raise noise levels on abutting land which includes residential and farm uses. The sounds from existing SR-12 would be lowered as a result of traffic diverted to the proposed highway. Without the proposed highway, noise levels from existing roads are expected to become intolerable. With the proposed highway, some heretofore quiet areas will receive undesirable highway noise, but such noise upon residences is within federal highway standards and allowances. Overall, the proposed highway would create less noise than the alternative of doing nothing and the alternative of the "Y" route with retention of local roads and their intra valley traffic.

XIX.

Noise studies show that some residences, located from 200 feet to 425 feet from the proposed highway will be impacted with noise levels of 70 to 74 dBA in 1995. Certain residences located near existing roads would benefit from a reduction in noise levels when the highway is completed.

Studies also show that noise levels at many receptor sites near the proposed highway will increase by 10 dBA or more over existing conditions during the construction year and in 1995. Many of these receptor sites are residences and will receive noise exceeding 60 dBA. The DOH plans certain noise abatement measures which will not, however, eliminate the noise.

Two mainline railroad tracks parallel the proposed highway. The existing ambient noise level is about 50 dBA which peaks to 90 dBA several times each day when a train passes. If the proposed highway is constructed, the peak noise level, other than from trains, would increase to 74 dBA. Presently, there is now more peak noise from passing trains than would be generated from the proposed highway.

XX.

Noise from the existing SR-12 can now be heard by those utilizing the floodplain and wetlands of the Yakima River.

Portions of the four existing public streamside and access easements will be subjected to increased noise in excess of the 70 dBA design noise level as a direct result of the proposed highway.

XXI.

DOE noise regulations, chapter 173-60 WAC, categorize residential areas as Class A EDNA (environmental designation for noise abatement) and agricultural lands as Class C EDNA. The maximum permissible noise level upon residences is 60 dBA which may be exceeded by as much as 15 dBA for a short period of time. The maximum permissible noise level upon agricultural lands is 70 dBA which may likewise be exceeded by as much as 15 dBA for a short period of time.

Federal Highway Administration design noise levels allow 60 dBA upon otherwise serene and quiet areas, 70 dBA upon residences and recreational areas, and 75 dBA upon other areas.

XXII.

Permitted uses in conservancy and rural environments include residential, agricultural, forest management practices (including road construction and timber harvesting), local public roads, certain signs, bulkheads, retaining walls, dikes, levies, riprapping, landfills, dredging, jetties and groins.

XXIII.

In the YCMP, the County has designated the lands in question as either in a rural or conservancy environment and are described thusly:

. . . .

11.02 Rural Environment. This Environment is characterized by intensive agricultural and recreational uses, moderate land values, lower public and private capital investment, and/or some biophysical development limitations. The management objectives are to protect agricultural land, maintain open space, and provide for recreational uses compatible with agricultural production.

11.03 Conservancy Environment. This Environment is characterized by very low intensity land uses primarily related to natural resources use and diffuse recreational development, relatively low land values, relatively minor public and private capital investment, and/or relatively major biophysical development limitations. Management objectives are oriented toward establishing a balance between sustained-yield natural resource utilization and low density recreational uses in this environment, with restriction of development in hazardous areas.

. . . .

XXIV.

The highway is located in, and compatible with, both conservancy and rural environments as described in the County's master program. Moreover, the compatibility matrix (Appendix E of Exhibit R-L) in the master program indicates that roads are compatible in both environments. The location of the highway, and attention given to flood

control aspects, indicates substantial attention devoted to proper design details. Additionally, the design of the highway would blend into the surrounding environments to the extent possible and ensures maintenance of the overall floodplain area.

Although the proposed highway will consume some agricultural land, it will also afford flood protection to about 1,400 acres of agricultural land. Moreover, it will help to maintain open space in certain landlocked areas but in so doing will hinder or eliminate access to the river over some private lands which are potentially available to persons who can obtain permission to cross such land. Existing public recreational access to and along the river will be maintained and enhanced as a result of the project. Further, there will be no reduction of natural resource utilization from the low density recreational uses over the long term. We find the proposed highway consistent with the management objectives for the rural and conservancy environments.

XXV.

The Yakima River has fish species of trout, steelhead and bass, and its associated wetlands are abundant in wildlife and birds (including bald eagles, ospreys, and peregrin falcons) which concentrate near that waterway, and is unique as compared to other areas of eastern Washington. Game species of wildlife are hunted in the river area since there is no wildlife reserve located therein.

XXVI.

The Yakima River has four public easements along its shoreline which are managed by the State Department of Game (hereinafter "DOG") for public recreational use. The location of the proposed highway potentially affects some of these easements due to physical proximity, noise, air, and water pollution as was found in prior litigation between the same principal parties:

The construction of this highway segment inevitably affects the easements in question. Noise, air and water pollution, increased accessibility and general unsightliness are possible consequences of constructing the highway. While the segment may not actually encroach upon state interests in the area, the roadway will constructively use the recreation area.

Opinion in Lange v. Brinegar, Exhibit A-6, p. 32. A subsequent study was required by the federal court and has shown, and we also find, that air and water pollution, and accessibility are not significantly affected by the proposed highway. However, there would be noticeable noise and aesthetic impacts upon certain of those sites. To minimize the impacts, DOH has agreed to provide additional streamside easements, and necessary access to such easements to the DOG. As a result of highway construction, 554 acres of land, including 84 riparian acres with a weighted habitat value of 3,074 units, will be lost to wildlife between Sunnyside Dam and Zillah. DOH will purchase 627 acres of land, much of which is privately owned, and make it financially available to the DOG for intensive management as wildlife habitats and fish ponds. Of such lands, 532 acres are riparian with a weighted habitat value of 4,770 units. The riparian acreage is the most productive for wildlife in the vicinity.

XXVII.

Construction of the proposed highway will necessarily remove some of the native vegetation and wildlife habitats permanently. This loss is more than compensated by placing valuable riparian and other areas between the highway and the river into public trust under management by the DOG. These areas would otherwise, in the long run, be converted and utilized for intensive farming. Thus, the proposed highway provides, as an incidental benefit, an assured opportunity to enhance and protect wildlife and their habitats over the long term which otherwise does not exist or would not be realized.

XXVIII.

The YCMP for Road and Railroad Design Policies provides at 2(a) that:

. . .

Proper design, location, and construction of road and railroad facilities should be exercised to:

(a) Minimize erosion and permit the natural movement of water.

The YCMP defines shoreline protection activities at Section 15.13.010 as:

. . . The construction or modification of structures along the shoreline, for the purpose of controlling flooding or erosion.

Shoreline Protection Activities Policy 5 provides that:

Flood protection measures which result in or tend towards channelization of streams should be strictly avoided.

Landfill activities are defined in Section 15.14.010:

The filling of topographic low areas and/or creation of dry upland area by filling or depositing earth material.

Landfill policies 4 and 5 provide that:

. . .

4. Normal and reasonable land grading and filling should be allowed where necessary to develop a land area for a permitted use. There should be no encroachment on the shorelines waters. There should be no substantial changes made in natural drainage patterns.
5. Filling in floodplain areas shall be by Department of Ecology permit only, and shall not be allowed if reduction of flood water storage capacity might endanger other areas.

The above provisions are, except for landfill policy 5 and excluding the definitions, couched in non-mandatory terms.

XXIX.

The proposed highway has the following features: it will require landfill on the shorelines; it will perform the function of a dike when the river floods; it will affect the natural movement of water and drainage patterns; it will channelize waters on certain portions of the Yakima River; in a 100-year frequency flood, it will protect 1,400 acres of farmland on the north bank of the river while inundating about 69 acres on the south bank of the river.

XXX.

The proposed highway is designed to allow transfer of groundwater under it and will not act as a barrier to the movement of such groundwater. No ponding of water will occur from the speculated compression of the water bearing aquifers by the highway.

XXXI.

Flood water level increases caused by the proposed highway during a 100-year frequency flood will reach a maximum of 0.7 foot at one station. This increase is within the advisory federal guidelines which limit an increase in the floodway level to one foot. The highway will have no significant effect on the floodwater level or the velocity of the river. With or without the proposed highway, erosion problems caused by the river will continue, however.

XXXII.

We find that the design, location, and construction of the instant project will not significantly affect the natural movement of water or floodwater storage capacity. It has not been shown that the highway will "endanger" other areas or necessitate other flood protection facilities.

We find the project to be consistent with the above provisions of the YCMP (Finding XXVIII) insofar as they can be applied herein. Further, we note that the Department of Ecology, which is the responsible agency for flood control matters, has issued a flood control zone permit for the instant project as required by landfill policy 5.

XXXIII.

Section 13.03 of the YCMP provides that:

. . . .
No permanent non-water dependent structures liable to damage by floodwaters shall be erected in the floodway of any stream in Yakima County, where such floodway has been defined by the U.S. Army Corps of Engineers or the U.S. Department of Housing and Urban Development.
. . . .

The proposed highway will be permanently erected in the 100-year frequency floodway of the Yakima River at several

locations as such floodway has been defined by the U.S. Army Corps of Engineers. The highway has been designed to withstand and protect against, and is not "liable to damage" by, such floodwaters.

XXXIV.

Section 13.04 of the YCMP provides that:

. . .
All construction shall be designed to protect the shorelines against erosion, uncontrolled drainage, slides, pollution, excessive excavations and fills and other factors detrimental to the environment, and shoreline development shall not substantially diminish the natural quality of nearby areas including the quality of the water involved.

.

The highway construction will not "substantially diminish" the natural quality of the shoreline areas or water quality. (See Findings XIV and XXIV). Rather, the design of the project and the permit conditions ensure that any construction will be properly controlled.

XXXV.

Section 15.13.041, relating to shoreline protection activities, provides that:

. . .
Where feasible, dikes and levees shall be located outside of the floodway of the river or stream in order to minimize any attendant increase in water stage and streamflow velocity over existing conditions.

.

Although the proposed highway is best classified as a road, it has been referred to as having the effect of a "water-tight dike" by DOH. More importantly, the highway performs the function of a dike and should be evaluated with those regulations insofar as they can be applied. The above regulation requires dikes to be located outside of the floodway to minimize increases in water stage and streamflow velocity where "feasible." Water level and streamflow velocities will be increased during the 100-year frequency flood as a result of the highway but only insignificantly and not detrimentally. (See Findings XXX, XXXI,

and XXXII.) We are not persuaded by appellants that it is "feasible" to locate the "dike" completely out of the floodway having found that the location of the "road," a small portion of which is in the floodway, is the most feasible. (See Finding IX.)

Somewhat similarly, Section 15.14.021 of the YCMP provides that:

. . .
The landfill will not cause any detrimental change in normal flood elevations, restrict stream or water flow, restrict delivery of irrigation water, or increase stream or river water velocity

We find that restrictions in stream or water flow caused by the highway will be insignificant, and the project essentially consistent with the above provisions.

XXXVI.

Section 15.13.042 of the YCMP provides that:

. . .
Rip-rapping and other bank stabilization measures shall be designed, located, and constructed in such a manner as to minimize the disruption of natural channel characteristics.
. . . .

It was not proved that bank stabilization measures proposed were designed, located, or to be constructed in such a manner as would disrupt natural channel characteristics. Any disruption would be due to the location of the road rather than from rip-rapping and other bank stabilization measures.

XXXVII.

Section 15.14.023 of the YCMP requires that "landfills" do not change normal drainage runoff patterns. The highway will, by its nature, necessarily change such drainage patterns. Because the project is more than a landfill, i.e., a road, the provision is not here strictly applicable. (See also Finding XXXI.)

XXXVIII.

Section 14.01.2 of the YCMP provides as follows:

. . .
Setbacks. All non-water dependent structures shall be set back a minimum of fifty (50) feet from the ordinary high water mark on all shorelines except where otherwise specified in the ordinance.
. . . .

The foregoing requirement is modified by Section 15.09.041 which requires that a road paralleling the shoreline leave a "usable" shorelines area, and by Section 15.09.044 relating to bridges. Appellants have shown that the shoreline remaining is less than 50 feet at places, but have not shown that such remainder is not "usable."

XXXIX.

The YCMP at Section 19.05 provides that:

. . .
Under no circumstances shall a variance be granted to allow a use not permissible under the terms of these Regulations in the Environment involved.
. . . .

The intent of such provision was that prohibited uses in any designated environment could not be the subject of a variance. However, it was intended that a variance could be granted from the conditional use requirements of the master program.

XL.

Section 15.09.020 permits the proposed highway in rural and conservancy designations. Thus, the highway is not a prohibited use in those environments. Further, it appears that such variance may properly be granted in this case by virtue of Section 19.03 of the YCMP which provides in part as follows:

. . .The medium of variance is to be used only for the relaxation of these Regulations as they apply to a permitted use, or in conjunction with an application for a conditional use.
. . . .

See also Section 19.00.

XLI.

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Shorelines Hearings Board comes to these:

CONCLUSIONS OF LAW

I.

The Board has jurisdiction over the persons and over the subject matter of this proceeding.

II.

In an appeal of any permit issuance, the party attacking the validity of such permit has the burden of proof. E.g. King County Chapter, Wash. Env. Coun. v. City of Seattle and Department of Highways, SHB No. 11; Brulotte v. Yakima County and Morris, SHB No. 137.

III.

The instant permits are tested for consistency with the Yakima County Master Program and the provisions of the Shoreline Management Act. RCW 90.58.140(2)(b).

IV.

The YCMP provides that the proposed highway is a permitted use in the rural and conservancy environments: 1) when social, economic, environmental and engineering studies indicate a shoreline location to be the most feasible and 2) by meeting all the requirements of a conditional use permit. Section 15.09.022.

V.

Appellants, upon whom the burden of proof rests, have not proven that a more feasible alternative location to the instant highway is available considering social, economic, environmental and engineering factors.

VI.

The proposed highway is a "road" within the meaning of Section 15.09, and such road would include all "necessary

structures" such as landfills, bank stabilization construction, and other protective construction. Section 15.09.010. We nonetheless may consider other regulations where the development functions similarly and insofar as may be applicable to the overall substantial development proposed. See generally English Bay Enterprises, Ltd. v. Island County, et al., SHB No. 185; Maloney, et al. and Seattle-First National Bank v. City of Seattle, SHB No. 190. Having so decided, we look now to the specific requirement of the conditional use permit at issue.

VII.

RCW 90.58.100(5) requires that master programs provide flexibility from its provisions under certain circumstances:

. . .
Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. . . .

The Act does not further define "conditional uses."¹ The YCMP which provides for conditional uses and variances describes conditional uses as follows:

1. The Department of Ecology has defined conditional uses:

WAC 173-14-140 DEFINITIONS AND OBJECTIVES OF CONDITIONAL USE. Conditional uses are specifically described within the master program. The objective of a conditional use provision is to provide more control and flexibility for implementing the regulations of the master program. With provisions to control the undesirable effects, the range of uses within each of the designated environments can be expanded to include additional uses.

Compare WAC 173-16.070(1).

The legislature has defined the term "conditional use" in another statute relating to zoning:

"Conditional use" means a use listed among those classified in any given zone but per-

18.00 Conditional Uses. Conditional uses are those uses which may be permitted to locate in shoreline areas, but are usually seen as uses which either do not need, or depending on the environment, considered not to be suitable for siting in shoreline locations. It is understood, however, that there may be special circumstances or a special type or style of conditional use that would make shoreline siting of special cases acceptable to the goals, policies, and intentions of the Master Program.

A use, otherwise permissible in an environment, which does not "need," in terms of water dependency or water-related need, a shoreline area can nonetheless locate within a shoreline area under a conditional use permit. Additionally, special circumstances may exist which would allow shoreline location of development where it would be acceptable to the goals, policies and intentions of the master program.

The statutory test for the granting of a shoreline conditional use or variance is generally stated:

. . . Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. . . . RCW 90.58.100(5).

Yakima County has implemented the above language in the provisions of its master program relating to conditional uses. See Sections 18.02 and 18.03.

1. (Cont'd)

mitted to locate only after review by the board of adjustment, or zoning adjustor if there be such, and the granting of a conditional use permit imposing such performance standards as will make the use compatible with other permitted uses in the same vicinity and zone and assure against imposing excessive demands upon public utilities, provided the county ordinances specify the standards and criteria that shall be applied. RCW 36.70.015(7). (Emphasis added.)

Both definitions have in common, the idea of the compatibility of a particular use in a particular area. See WAC 173-16-070(1).

The tests set forth in Section 18.02 appear to be more stringent than the DOE guidelines.² For example, under the YCMP, the applicant must show "necessity" and that denial of a conditional use permit would create a "hardship" and show that pollution from the proposed use will not be "more severe" than that from permitted uses. Avoidance of hardships constitute the authority for varying the provisions of a master program and is not necessarily a requirement for allowing a shoreline conditional use, as is evident from a careful reading of RCW 90.58.100(5). Here, however, Yakima County has decided to make "hardship" a test for a conditional use permit and such has been approved by the DOE. No party contends that the showing required by the YCMP is at variance with the statute and regulations and we proceed to the determination of this matter using the standard set forth therein, keeping in mind that appellants must sustain their burden of proof by showing non-compliance with any of the foregoing provisions.

A. Section 18.02.1 provides:

There is some necessity for a shoreline site for the proposed use, or that the particular site applied for is essential for this use, and that denial of the conditional use request would create a hardship on the applicant to locate the proposed use anywhere outside the shoreline jurisdiction area.

2. DOE guidelines for preparation of master programs suggest the following tests:

Uses classified as conditional uses can be permitted only after consideration by the local government and by meeting such performance standards that make the use compatible with other permitted uses within that area.

Conditional use permits will be granted only after the applicant can demonstrate all of the following:

- (a) The use will cause no unreasonably adverse effects on the environment or other uses.
 - (b) The use will not interfere with public use of public shorelines.
 - (c) Design of the site will be compatible with the surroundings and the Master Program.
 - (d) The proposed use will not be contrary to the general intent of the master program.
- WAC 173-16-070(1).

Appellants have not shown that there is no "necessity" for the highway location or that the sites in question are not "essential" for the intended use. Respondent, on the other hand, has affirmatively shown that the location of the proposed highway is the most feasible in terms of environmental, economic, social and engineering factors, and therefore "some necessity" for the location. Contrary to the contention of appellants, the section does not require "water dependency" of a substantial development. To so require would defeat the purpose of providing for a conditional use permit and impart an unwarranted inflexibility into the master program inconsistent with the statute and rules under which it is promulgated. It is clear that the master program itself does not so require: Section 18.00 anticipates non-water dependent uses; Sections 15.09.020 and .022 permit roads in shorelines by conditional use permits. Moreover, even the policy of the Shoreline Management Act (SMA) does not require water dependent developments but does give priority to such development. RCW 90.58.020. See Smith, et al. v. City of Seattle and New England Fish Co., SHB No. 158, Department of Ecology, et al. v. City of Poulsbo and Xenos, SHB No. 201. Major highways and freeways in the rural and conservancy areas are contemplated in the YCMP as shoreline conditional uses. Section 15.09.022. A shoreline conditional use permit requires a showing of "hardship." Section 18.02.1. To aid in our search of the meaning of "hardship" in such context, we first look to the statute and guidelines. Neither the statute (RCW 90.58.100(5)) nor the DOE Guidelines (WAC 173-16-070(1)), from which spring the authority and guidance for shoreline conditional use provisions, requires a showing of "hardship" in order to qualify therefor. To view the YCMP provisions in harmony with the statute and guidelines, it becomes apparent that the "hardships" referred to must be something distinct from the traditional notions of hardships for variances under zoning law. To hold otherwise would defeat the purpose of providing for a shoreline conditional use permit, i.e., to give flexibility to a master program. WAC 173-14-140. We conclude that the "hardship" requirement for such use permits in the YCMP is met when the development is otherwise consistent with the policy of the Act, where extraordinary circumstances are shown, and where the public interest does not suffer any substantial detriment. RCW 90.58.100(5). We conclude that the proposed highway meets the foregoing test for reasons below and given elsewhere in this decision. We can find no substantial detrimental effect to the public interest, but rather, find that the development promotes the long term statewide interest. (See Conclusion VII D and E.) DOH has established by its proofs that the proposed route is the most feasible, and that the factors which

compel such a choice amply demonstrate extraordinary circumstances. (See Findings II through XI.) Appellants, who have the burden of showing otherwise, have not done so. Finally, appellants, have not shown the proposed highway to be inconsistent with the policy of the Act. Moreover, as was judicially stated in a recent shoreline case, Eickhoff v. Thurston County, 17 Wn. App. 774 at 789:

The Shoreline Management Act of 1971 was intended to enhance ordered, advantageous and environmentally sound development, not prohibit it. Department of Ecology v. Ballard Elks Lodge 827, 84 Wn.2d 551, 527 P.2d 1121 (1974).

Appellants have thus failed to show the DOH would not suffer a hardship if it were required to locate outside of the shoreline area under the circumstances of this case.

B. Section 18.02.2 provides:

The design of the proposed use will make it compatible with the environment it will be placed in.

Appellants have not shown that the design of the proposed highway would be incompatible with the rural or conservancy environments. All indications are to the contrary as we have found.

C. Section 18.02.3 provides:

Water, air, noise, and other classes of pollution will not be more severe than the pollution that would result from the uses which are permitted in the particular environment.

To compare whether a proposed use would cause pollution to be "more severe" than other permitted uses in an environmental designation, the level of emissions from each of such permitted uses must be known. That the pollution level increases does not necessarily indicate that the pollution generated is "more severe." Neither does a showing of an anticipated level of pollution from a proposed project which is greater than existing levels necessarily show pollution to be "more severe."

With respect to noise, the application of Section 18.02.3, which is susceptible to more than one interpretation, is certainly unclear. For example, it is uncertain,

from the provision itself, whether noise levels refer to peak or ambient levels. We give great weight to the interpretation given to the provision by the agencies who adopted or approved such provision and who are charged with its administration. See Weyerhaeuser v. Department of Ecology, 86 Wn.2d 310 (1976); Eickhoff v. Thurston County, 17 Wn. App. 774 (1977); Larson v. Social and Health Services, 14 Wn. App. 386 (1975); Ball v. Smith, 14 Wn. App. 258 (1975); Coughlin v. City of Seattle and Condominium Builders, Inc., SHB No. 77-18. We therefore adopt the county's interpretation of the provision, and the DOE's apparent affirmance thereof by approval, with respect to measurement of noise, i.e., that in comparing uses, noise is to be measured by peak levels. To establish a standard to compare whether noise pollution will be "more severe" than other permitted uses, appellants rely on chapter 173-60 WAC which establishes allowable noise limits upon various receiving property. Sounds from motor vehicles are exempted from the regulations. WAC 173-60-040; chapter 173-62 WAC. However, the noise levels imposed upon residences, business and agricultural areas set forth in chapter 173-60 WAC are at least an indication of what level of noise is considered permissible on a particular environment. See Carlson, et al. v. Valley Ready Mix Concrete Co. and Yakima County, SHB No. 223; Maloney, et al. and Seattle-First National Bank v. City of Seattle, SHB No. 190. However, appellants have not shown how the standards in WAC 173-60-040³ corollate with the Federal Highway Administration design standards (PPM 90-2).

3. WAC 173-60-040 MAXIMUM PERMISSIBLE ENVIRONMENTAL NOISE LEVELS. (1) No person shall cause or permit noise to intrude into the property of another person which noise exceeds the maximum permissible noise levels set forth below in this section.
- (2)(a) The noise limitations established are as set forth in the following table after any applicable adjustments provided for herein are applied.

EDNA OF NOISE SOURCE	EDNA OF RECEIVING PROPERTY		
	Class A	Class B	Class C
Class A	55 dBA	57 dBA	60 dBA
Class B	57	60	65
Class C	60	65	70

(b) Between the hours of 10:00 p.m. and 7:00 a.m. the noise limitations of the foregoing table shall be reduced by 10 dBA for receiving property within Class A EDNAs.

Without a frame of reference we cannot determine, based on such standards, whether the predicted noise levels (peak) from the highway would be "more severe" than noise from other permitted uses in the particular environments. The County and DOE have found that such noise would not be "more severe" and appellants have not shown otherwise.

With respect to air and water pollution, we are not persuaded that any such pollution from the proposed highway would be "more severe" than the nature and amounts of pollutants resulting from other permitted uses in the rural and conservancy environments.

Finally, where there is a dispute as to whether a development is aesthetically pleasing or displeasing, the determination of local government is entitled to greater weight than individual opinion thereon. Lane v. Town of Gig Harbor, SHB No. 129. Appellants have not persuaded us to disturb the County's determination. Moreover, any asserted aesthetic values which are diminished from appellants' viewpoint would be outweighed by the public benefits conferred. See English Bay Enterprises, Ltd. v. Island County, supra.

D. Sections 18.02.4 and .5 provide:

18.02.4 None of the Goals, Policy Statements or specific aims of the particular environment would be violated, abrogated, or ignored.

18.02.5 No other applicable regulations will be violated.

We conclude that the proposed highway is a reasonable and appropriate use of the shorelines under the circumstances of this case. YCMP, p. 3-1. Notwithstanding this conclusion, the highway must also be developed in a manner which will promote and enhance the public interest. RCW 90.58.020.

3. (Cont'd)

(c) At any hour of the day or night the applicable noise limitations in (a) and (b) above may be exceeded for any receiving property by no more than:

(i) 5 dBA for a total of 15 minutes in any one-hour period; or

(ii) 10 dBA for a total of 5 minutes in any one-hour period; or

(iii) 15 dBA for a total of 1.5 minutes in any one-hour period.

A part of the stated "public interest" is protection against adverse effects to public health, land, vegetation, and wildlife, and the waters and their aquatic life. Id.; YCMP p. 3-1. We have found no such adverse effects which can be said to detrimentally affect the "public interest" which would compel us to vacate the instant permit. To the contrary, efforts to protect the environment from any adverse effects are evident. The mere fact that a development, such as this highway, attracts pollutants, does not necessarily compel a conclusion that the "quality" of the environment is thereby degraded, particularly where the overall pollutant increase is, at most, minor. We also acknowledge that the construction of the project facilitates a necessary transportation system which is in the long term state and federal interests. Any adverse environmental impacts would be outweighed by the public benefit conferred. See Burlington Northern, Inc. v. Town of Steilacoom, SHB No. 40; Department of Natural Resources v. Island County, SHB No. 77-8. See English Bay Enterprises, Ltd. v. Island County, et al., supra.

Appellants have not shown violations or inconsistencies with any applicable master program provision relating to the rural or conservancy environment, or with any applicable regulation.

E. Section 18.02.6 provides that "the use will not interfere with the public use of public shorelines." See Section 13.02. Although the proposed highway will impact public recreational sites along the Yakima River, we conclude that the impacts will not materially "interfere" with the public use thereof. Even if it could be said to interfere with such sites, the additional land brought into public recreational areas as a result of the highway is more than compensating. Considering the overall project, appellants' contention pales in light of the long term public benefits conferred. E.g. Burlington Northern, Inc. v. Town of Steilacoom, supra.

VIII.

Although it concedes that appellant Wilcox has standing to bring this appeal, DOH raises such issue as to appellant Lange inasmuch as the Lange residence is not near the proposed highway.

The determination of who is a "person aggrieved" is made by the DOE under the legislative authority granted to it by RCW 90.58.180(1), and such determination is not further reviewed by this Board. Moore v. City of Seattle, SHB No. 204,

Order on Motion. The instant appeals have been certified and, accordingly, appellant Lange has standing to bring this appeal.

IX.

Appellants were plaintiffs in a prior lawsuit commenced against DOH and others in Lange v. Brinegar, Cause No. 3941 in the United States District Court for Eastern District of Washington. Therein, the court ordered the U.S. Secretary of Transportation to make certain findings required by 23 U.S.C. § 138 (hereinafter "Section 4(f)") which respondent DOH contends is here determinative by application of collateral estoppel on the issue of the most feasible route under Section 15.09.022 of the YCMP and on the issue of interference with the use of certain public streamside easements.⁴ The Secretary found

. . . (1) there are no feasible and prudent alternatives to the use of land from the public access and streamside easements to the Yakima River, and (2) the highway proposal includes all possible planning to minimize harm resulting from such use.

Exhibit R-2 (VIII B). Such report was submitted to the court, and without further hearing, judgment was entered wherein the court found:

Upon review of the § 4(f) determination, this Court finds the same to be sufficient within that contemplated by the Court in its Opinion of September 2, 1976 in that there are no feasible and prudent alternatives to the use of land from the public access and streamside easements to the Yakima River, and the highway proposal.

Exhibit A-6. Respondent DOH also seeks to apply the doctrine of collateral estoppel to appellants' contentions that the proposed highway will create flooding problems. The court heard testimony and found that "I-82 was designed to withstand passage of the basic flood (the 100-year flood)" and that "although the final EIS inaccurately depicts the flood-

4. The doctrine of collateral estoppel can be applied in an administrative proceeding. See 2 Am.Jur.2d Administrative Law § 502-504 (1962); 2 Davis, Administrative Law Treatise, § 18.12 (1958).

way boundary, the evaluation of the effect of I-82 on the flood plain and flood water limits remains accurately depicted." Lange v. Brinegar opinion at p. 33. None of the foregoing findings were appealed.

Collateral estoppel, urged by DOH as to the foregoing issues, precludes the relitigation of issues once litigated and determined:

Parties are collaterally estopped by judgment where the facts and issues claimed to be conclusive on the parties in the second action have been actually and necessarily litigated and determined in a prior action. Henderson v. Bardahl Int'l Corp., 72 Wn.2d 109, 431 P.2d 961 (1967).

. . . [C]ollateral estoppel prevents a second litigation of issues between the same parties even in connection with a different claim or cause of action.

King v. Seattle, 84 Wn.2d 239, 243 (1974). The rule is similarly stated:

Where a question of fact essential to the judgment is actually litigated and determined by a valid and final judgment, the determination is conclusive between the parties in a subsequent action on a different cause of action

Restatement, Judgments, Section 68(1) (1942). The doctrine of collateral estoppel does not apply where the finding and judgment are not decisive of the issue, where the fact or issue was not litigated and determined in the prior action, or where the doctrine would defeat the ends of justice or work an injustice. Henderson v. Bardahl Int'l Corp., 72 Wn.2d 109, 116-119 (1967). The party asserting collateral estoppel has the burden of proof showing that the issues are identical and that they were determined in the prior proceeding. Luis Truck v. Util. & Transp. Comm'n, 72 Wn. 2d 887, 894 (1967).

We conclude that the doctrine is inapplicable to appellants' issues relating to the "Y" route alternative and relating to interference with the use of streamside easements. The issues were not shown to have been fully litigated and determined in the prior action and we will not assume that the Secretary of Transportation's findings, approved by the court subsequent to the trial, were "actually and necessarily" litigated in the prior action.

With respect to the flooding problems, we conclude that the findings made by the court and quoted above, were actually and necessarily litigated and determined by the court and should apply in the instant matter where appropriate.

With respect to interference with public recreational areas, we conclude that the findings made by the court (quoted in Finding XXVI) were actually and necessarily litigated and determined by the court and should apply in the instant matter where appropriate.

X.

The substantial development and conditional use permit has not been shown to be inconsistent with any provision of the Yakima County Master Program or any provisions of RCW 90.58, and the permit should be affirmed.

XI.

The master program, as interpreted by Yakima County, permits a variance from a conditional use requirement. Moreover, the SMA does not appear to preclude such varying. Accordingly, we conclude that Section 18.02.3 of such master program can be varied.

XII.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this:

ORDER

Yakima County's action issuing a shoreline substantial development permit and a conditional use permit (No. 77-4) to the State Department of Highways and approval thereof by the Department of Ecology are affirmed.

DATED this 18th day of January, 1978.

W. A. GISSBERG, Chairman
DAVE J. MOONEY, Member
ROBERT F. HINTZ, Member
GERALD D. PROBST, Member
(See Dissenting Opinion
of CHRIS SMITH, Member and
ROBERT E. BEATY, Member,
following.)

DISSENT

PER ROBERT E. BEATY:

Smith, Chris and Beaty, Robert E. (dissenting) -- We are profoundly troubled by the majority opinion in this matter which seems to significantly misinterpret applicable provisions of the Shoreline Management Act (SMA) and the Yakima County Shoreline Master Program (YCSMP). While we recognize the reasons behind the majority's admitted reluctance to deny this permit for a project which has been many years in the planning, the undeniable fact is that it does not meet the criteria of the YCSMP and the SMA.

The project in question fails to meet the criteria for a conditional use permit set out in the YCSMP (Section 18.02). There is no necessity for a shoreline site. Not only is the site applied for not essential to the use, but selecting another site for the project will impose no particular hardship on the applicant. Indeed as the majority opinion states (p. 7 line 20) the cost of putting the highway along the so-called "Y route", for instance, would be less than putting it down the river valley, a convincing economic reason for relocation. In short, the appellants have proven that the "Y route" would be cheaper. What further economic considerations do the majority require to prove that an alternate route is more feasible (p. 8 line 17)? There will also be less agricultural land lost to posterity under the alternate proposal. Hardship is not specifically defined in the master plan, but "unnecessary hardship", is a well defined term of art, and this project doesn't meet that criterion. If it is argued that zoning analysis does not really lend itself to an agency with the power of condemnation which still hasn't acquired all the property in question that merely adds further weight to the argument that the Department of Transportation (DOT) has suffered no hardship. Indeed the majority recognizes that the project as proposed does not meet traditional hardship tests (p. 30 line 9) and says that therefore some other standard must have been intended. This ignores the obvious language of the YCSMP and creates a new common law of zoning for the SMA which will only eliminate predictability and orderly planning for anyone operating under the jurisdiction of the Act. Failure to meet the hardship criterion is sufficient reason in and of itself to deny the permit. However, other criteria are violated as well.

The majority argue that various types of pollution will not be more severe than that generated by permitted uses upon completion of this project. By using the term "permitted

uses" in this context the master plan intends to mean that noise pollution will not be more severe than that generated by agricultural and residential uses, not other conditional uses. In addition, the majority has erred by saying "more severe" pollution means peak pollution levels.

For the majority to reason that the noise generated by I-82 is permissible under federal noise standards is a non-sequitur because those standards do not attempt to compare interstate highway noise levels with the noise levels of permitted uses. In other words the applicable federal noise standards, FHWA PPM 90-2 standards, have no bearing on this matter.

As indicated above the majority also concludes that "more severe" pollution means peak noise pollution and there is no evidence that peak noises from an interstate freeway exceed peak noises from agricultural and residential uses. However, it is clear to us that "more severe" must be construed as a stricter standard. Common sense dictates that an interstate highway generates sustained high level noise pollution more severe than permitted uses which might generate similar peak noise levels intermittently. (See dissent in SHB No. 223, Carlson v. Valley Ready Mix.) We give little credibility to the county's after-the-fact interpretation of this language in view of the pending appeal concerning this language now before the courts.

In the eventuality that the minority opinion on the meaning of "more severe" might prevail, the county has granted a variance to a condition of the conditional use.

We do not agree that the YCSMP says that one may grant a variance to a condition of a conditional use. If it had intended this unusual result it would have said so explicitly. Rather, it is more logically read to say that a conditional use (e.g., a commercial building) and a variance (e.g., to exceed height requirements) may be applied for simultaneously. In short, a variance and conditional use may both be applicable to the same development but one may not be applied to alter the other. However, assuming that this rather novel procedure is proper, the variance must also fail. It has not been approved by the Department of Ecology as required by RCW 90.58.140(12). Further, it would not be approvable; the applicant is entitled to a variance only when the regulations produce "unnecessary hardship."

The "unnecessary hardship" standard is strict and under the applicable regulations the applicant must prove he has no reasonable use of his property to obtain either a use or

an area variance. WAC 173-14-150, SHB No. 218, Kooley v. Department of Ecology. In this case the applicant doesn't yet own all the property in question and may otherwise dispose of that property which it does own. Furthermore, the request for a variance arises from a self-created hardship. The DOT planned this project in full knowledge of the requirements of the SMA and cannot claim a variance for a self-created hardship. 3 Anderson American Law of Zoning, 2nd Ed., sec. 18.43, 8 McQuillin Municipal Corporations, 3rd Ed., sec. 25.168. However, what is before the Board is a conditional use and Yakima County's strict standards have not been met.

We are also troubled with the majority's decision in a variety of other instances. The majority asserts that any disruption caused by "riprap" is due to the location of the highway. By ordinary definition and the master plan definition riprap has no life of its own (YCSMP p. 5-7). Riprap lies against and protects slopes subject to erosion, it doesn't exist by itself. To permit its improper location on the basis of such reasoning, eviscerates this section of the master plan. Similar reasoning applies to the majority's analysis of landfill requirements (p. 23); landfill cannot be excused from its own regulations because there is a highway on top of it. Landfill exists primarily to permit other development (though it can on occasion be unaccompanied by further development). To allow erosion of landfill requirements because of accompanying development creates a substantial loophole in the master plan standards.

Next, lest anyone think that the foregoing elevates form over substance let us turn to the policies of the SMA and the Federal Highway Act.

One cannot help but acknowledge in passing the perversion of the Federal Highway Code (23 USC 103) by local political considerations which have turned the interstate into a local feeder road. The interstate system is intended to connect major traffic generators by the most direct route, which in this instance would also serve the policies of the SMA.

The Yakima River Valley is in fact, as well as in law, a shoreline of statewide significance. Its enormous ecological and recreational significance can only be diminished by further paving the valley. In this arid region the river bottom sustains most of the animal life in the valley through the hot summers. The record shows a remarkably dense population of both game and non-game wildlife in direct proximity to the river, in addition to that wildlife throughout the

valley that is sustained by migration to the river in the summer months. In addition, the cottonwoods and plant life on either side of the river, constitute a unique recreational and biological element of the local environment. The legislature's forcefully expressed desire for protecting shorelines of statewide significance is embodied in RCW 90.58.020, which states:

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of state-wide significance. The department, in adopting guidelines for shorelines of state-wide significance, and local government, in developing master programs for shorelines of state-wide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the state-wide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational uses including but not

limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

. . . .

For reasons herein enumerated the project before us does not meet these criteria. For example, the statewide interest in this instance lies in the preservation of unique and fragile shorelines not in their consumption by non-water dependent, unnecessary uses.

The proposal before us does not preserve the natural character of the shoreline. Long-term benefit is to be found in the preservation of natural shorelines and animal species rather than their consumption for short-term transportation alternatives. It destroys a substantial portion of a uniquely prolific wildlife area rather than protecting it. It severs extant access to publicly owned areas of the shoreline. The YCSMP is clearly set up to recognize these standards and does not permit such a project as an interstate highway without compelling reason when properly interpreted.

To call for relocation of the highway is no impractical suggestion. While it is not up to this Board to choose a route, the so-called "Y route" or variations thereon would run the highway away from the river through the barren foothills in essentially the same manner as I-82 now comes from the Ellensburg region to Yakima. It is not only practical, more environmentally sound, and in keeping with the policies of the SMA but it has the almost unprecedented benefit of saving the taxpayers money.

It is easily seen that the overall intent of the YCSMP was to preserve the river valley in essentially the same condition in which it is now found. The policies of the SMA for shorelines of statewide significance clearly prohibit devoting limited natural resources to such consumptive, polluting, non-water-dependent uses without compelling reason. The appellants have clearly demonstrated that no "unnecessary hardship" standard can be met when reasonable alternatives are available.

CHRIS SMITH, Member
ROBERT E. BEATY, Member